

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

QUAYLAN ANDERSON,)	
)	
Plaintiff,)	
)	
v.)	No. 2:22-cv-00349-JRS-MKK
)	
UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Order Screening Second Amended Complaint, Denying Without Prejudice Motion for Appointment of Counsel, and Directing Further Proceedings

Plaintiff Quaylan Anderson is a federal inmate currently incarcerated at the United States Penitentiary in Terre Haute, Indiana ("USP Terre Haute.") He has filed a second amended complaint bringing claims under the Federal Tort Claims Act, 28 U.S.C. § 2671 *et seq.* ("FTCA"), based on allegations that he was subjected to excessive force and denied adequate medical care while he was incarcerated at USP Terre Haute. Because Mr. Anderson is a "prisoner," this Court has an obligation to screen the second amended complaint before service on the defendants. 28 U.S.C. § 1915A(a), (c). The Court also resolves Mr. Anderson's pending motion for appointment of counsel.

I. Motion for Appointment of Counsel

Mr. Anderson has filed a motion asking the Court to appoint counsel to represent him. Dkt. 10. Litigants in federal civil cases do not have a constitutional or statutory right to court-appointed counsel. *Walker v. Price*, 900 F.3d 933, 938 (7th Cir. 2018). Instead, 28 U.S.C. § 1915(e)(1) gives courts the authority to "request" counsel. *Mallard v. United States District Court*, 490 U.S. 296, 300 (1989). As a practical matter, there are not enough lawyers willing and qualified to accept a pro bono assignment in every pro se case. *See Olson v. Morgan*, 750 F.3d

708, 711 (7th Cir. 2014) ("Whether to recruit an attorney is a difficult decision: Almost everyone would benefit from having a lawyer, but there are too many indigent litigants and too few lawyers willing and able to volunteer for these cases.").

"When confronted with a request under § 1915(e)(1) for pro bono counsel, the district court is to make the following inquiries: (1) has the indigent plaintiff made a reasonable attempt to obtain counsel or been effectively precluded from doing so; and if so, (2) given the difficulty of the case, does the plaintiff appear competent to litigate it himself?" *Eagan v. Dempsey*, 987 F.3d 667, 682 (7th Cir. 2021) (quoting *Pruitt v. Mote*, 503 F.3d 647, 654 (7th Cir. 2007)). These two questions "must guide" the Court's determination whether to attempt to recruit counsel. *Id.* These questions require an individualized assessment of the plaintiff, the claims, and the stage of litigation. *See Pruitt*, 503 F.3d at 655-56. The Seventh Circuit has specifically declined to find a presumptive right to counsel in some categories of cases. *McCaa v Hamilton*, 893 F.3d 1027, 1037 (7th Cir. 2018) (Hamilton, J., concurring); *Walker*, 900 F.3d at 939.

The first question, whether litigants have made a reasonable attempt to secure private counsel on their own "is a mandatory, threshold inquiry that must be determined before moving to the second inquiry." *Eagan*, 987 F.3d at 682; *see also Thomas v. Anderson*, 912 F.3d 971, 978 (7th Cir. 2019) (because plaintiff did not show that he tried to obtain counsel on his own or that he was precluded from doing so, the judge's denial of these requests was not an abuse of discretion). Mr. Anderson has not indicated whether he has attempted to contact any attorneys with requests for representation. Accordingly, the Court finds that he has not made a reasonable effort to recruit counsel on his own before seeking the Court's assistance. *See Thomas*, 912 F.3d at 978. His motion for assistance with recruiting counsel, dkt. [10], must therefore be **denied without prejudice**.

The **clerk is directed** to send Mr. Anderson a motion for assistance recruiting counsel form, which he must use if he chooses to renew his motion. The Court will remain alert to changes in circumstances that may warrant reconsideration of the motion, such as a settlement conference or trial.

II. Screening Standard

When screening a complaint, the Court must dismiss any portion that is frivolous or malicious, fails to state a claim for relief, or seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. § 1915A(b). To determine whether the complaint states a claim, the Court applies the same standard as when addressing a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). *See Schillinger v. Kiley*, 954 F.3d 990, 993 (7th Cir. 2020). Under that standard, a complaint must include "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The Court construes *pro se* complaints liberally and holds them to a "less stringent standard than formal pleadings drafted by lawyers." *Cesal v. Moats*, 851 F.3d 714, 720 (7th Cir. 2017).

III. The Second Amended Complaint

In the second amended complaint, Mr. Anderson brings claims against the United States under the FTCA. He seeks money damages. He bases his claims on the following allegations:

On or about the morning of January 28 or 29, 2022, Mr. Anderson began to hear voices and feel suicidal during cell rotation. The voices were telling him to kill himself, and he decided to commit suicide. Officer Monnett and Officer Arnett approached his cell. He told them that he

was going to kill himself, but they ignored his complaint of suicidal ideation and ordered him to submit to hand restraints. Mr. Anderson asked to speak to a psychologist. Officer Monnett denied the request and said that he would kill Mr. Anderson if he did not submit to restraints.

After Mr. Anderson cuffed up, Officer Monnett entered the cell, told Mr. Anderson to back up, and attacked Mr. Anderson for no reason. Although Mr. Anderson was complying with staff orders, Officer Monnett grabbed him by his cuffed arms, slammed his head against the wall three times, and nearly knocked him out.

Mr. Anderson alleges that Officer Monnett used excessive force when no force was needed, Officer Arnett failed to intervene to protect him, and they both ignored his suicidal ideations and denied him mental health care.

IV. Discussion of Claims

Although a plaintiff need not plead legal theories in a complaint, *see* Fed. R. Civ. P. 8(a), Mr. Anderson has identified the theory that he wishes to use against the United States—a claim under the FTCA. *See* Dkt. 1 at 1, 9. Where a *pro se* litigant has expressly stated the legal theory he wishes to pursue, the district court is not required to analyze whether the allegations in the complaint might state a claim under a different legal theory. *See Larry v. Goldsmith*, 799 F. App'x 413, 416 (7th Cir. 2016) (citing *Clancy v. Office of Foreign Assets Control of U.S. Dep't of Treasury*, 559 F.3d 595, 606-07 (7th Cir. 2009)).

Under the FTCA, the United States is liable for money damages for personal injury caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his or her employment under circumstances, where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred." 28 U.S.C. § 1346(b)(1) (emphasis added). Claims under the FTCA are

governed by the law of the place where the act or omission occurred—in this case, Indiana. Under Indiana law, Mr. Anderson has adequately alleged claims for assault, battery, and negligence.¹ Accordingly, his FTCA claims based on those theories **shall proceed**.

This summary of claims includes all of the viable claims identified by the Court. All other claims are dismissed. If Mr. Anderson believes that additional claims were alleged in the complaint, but not identified by the Court, he shall have **through April 6, 2023**, to identify those claims.

V. Conclusion Service of Process

For the reasons stated above, Mr. Anderson's motion for appointment of counsel, dkt. [13], is **denied without prejudice**. The **clerk is directed** to enclose a blank form motion for assistance with recruiting counsel with Mr. Anderson's copy of this Order.

The **clerk is directed** to issue a single summons to the United States attorney for this district and the Attorney General of the United States at Washington, D.C., pursuant to *Fed. R. Civ. P.* 4(i)(1). The Marshal for this District is directed to **serve** the summons and second amended complaint by registered or certified mail at the expense of the United States.

Nothing in this Order prohibits the filing of a proper motion pursuant to Rule 12 of the Federal Rules of Civil Procedure.

¹ The United States' liability under the FTCA is subject to an exception for intentional torts including assault and battery. 28 U.S.C. § 2680(h). That exception is in turn subject to an exception for such torts if they are committed by an "investigative or law enforcement officer," which means any officer of the United States who is empowered by law to execute searches, to seize evidence, or to make arrests for violations of Federal law. *Id.* It is not clear from Mr. Anderson's second amended complaint whether Officers Monnett and Arnett were "investigative or law enforcement officers" within the meaning of the statute, but the exceptions in § 2680(h) are affirmative defenses that Mr. Anderson was not required to plead around. *Parrott v. United States*, 536 F.3d 629, 634–35 (7th Cir. 2008). Thus, the Court will allow Mr. Anderson's assault and battery claims to proceed at this stage of the case.

The **clerk is directed** to update Mr. Anderson's address on the docket consistent with the Distribution list, below.

IT IS SO ORDERED.

Date: 03/14/2023

A handwritten signature in blue ink, reading "James R. Sweeney II", is written over a horizontal line.

JAMES R. SWEENEY II, JUDGE
United States District Court
Southern District of Indiana

Distribution:

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